

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
FILICE AND PERRELLI CANNING }
COMPANY, INCORPORATED }

Appearances:

For Appellant: F. W. La Frenz & Co., Messrs. Bullock,
Kellogg & Mitchell, and Messrs. Byrne &
Lamson, its Attorneys
For Respondent: Frank L. Querena, his Attorney

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929) from the action of the Franchise Tax Commissioner in overruling the protest of Filice and Perrelli Canning Company, Incorporated to his proposed assessment of an additional tax of \$458.44 based upon the return of the corporation for the taxable year ended December 31, 1928. The point before us for determination is whether or not the Appellant is entitled to an allocation of some of its income to non-taxable classification on the theory that it arises from business done outside of California.

The facts of the case are closely analogous to those in the matter of the Appeal of Great Western Electro Chemical Company, decided today by this Board. The Appellant is a California corporation conducting a cannery business in this State, disposing of its product through intrastate sales here and interstate sales. It does no intrastate business elsewhere,

For the reasons indicated in our opinion in the matter of the Appeal of Great Western Electro Chemical Company, we believe that all interstate business of this character must be regarded as California business. We are mindful of the hardship which such a conclusion visits upon a California industry, but we are left no alternative in view of the authorities cited in our opinion to which we have referred above.

Those who were responsible for drafting the California statute must have been familiar with the doctrine of the case of United States Glue Co. v. Oak Creek, 153 N.W. 241; 247 U. S. 321. The parallel between the Wisconsin law there interpreted and ours is inescapable. There is nothing from which we find that the intent of the California Legislature was any different from that of the Wisconsin Legislature with respect to what constitutes business done within the state.

Even though the orders for most of the Appellant's goods

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appear to have been taken by its brokers, agents and officers outside of the state, since the merchandise was later shipped directly to the customers from the California plant of the taxpayers, all these transactions would be in interstate commerce under the doctrine of the United States Supreme Court in the case of Real Silk Hosiery Mills, Inc. v. Portland, 268 U.S. 325. None of these sales could be regarded as business done outside of California.

Therefore, we conclude that the Appellant is taxable on its entire net income and is not entitled to any allocation thereof to business done without the state.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of the Franchise Tax Commissioner in overruling the protest of Filice and Perrelli Canning Company, Incorporated, a corporation against proposed assessment of an additional tax in the amount of \$458.44, based upon the return of said corporation for the year ended December 31, 1928, pursuant to Chapter 13, Statutes of 1929, be and the same is hereby sustained.-

Done at Sacramento, California, this 14th day of December, 1931, by the State Board of Equalization.

Jno. C. Corbett, Chairman
R. E. Collins, Member
H. G. Cattell, Member
Fred E. Stewart, Member

ATTEST: Dixwell L. Pierce, Secretary,